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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

TRUSTEES OF THE CONSTRUCTION
INDUSTRY AND LABORERS HEALTH
AND WELFARE TRUST; TRUSTEES OF
THE CONSTRUCTION INDUSTRY AND
LABORERS JOINT PENSION TRUST;
TRUSTEES OF THE CONSTRUCTION
INDUSTRY AND LABORERS VACATION
TRUST; AND TRUSTEES OF THE
SOUTHERN NEVADA LABORERS
LOCAL 872 TRAINING TRUST,

Plaintiffs,

vs.

JR CONCRETE CUTTING, INC., a Nevada
corporation; and EDITH RICHELLE
HERRERA, an individual,

Defendants.

Case No. 2:09-cv-01897-RCJ-RJJ

**MOTION FOR GARNISHEE
JUDGMENT AGAINST ROSENDIN
ELECTRIC, INC.**

Pursuant to Rule 69(a) of the Federal Rules of Civil Procedure, a judgment creditor may pursue execution of a judgment in accordance with any procedure or practice of the state in which the district court is sitting. Plaintiffs, Trustees of the Construction Industry and Laborers Health and Welfare Trust, Trustees of the Construction Industry and Laborers Joint Pension Trust, Trustees of the Construction Industry and Laborers Vacation Trust, and Trustees of the Southern

1 Nevada Laborers Local 872 Training Trust (collectively “Trust Funds”) apply pursuant to Nevada
2 Revised Statute § 31.320(1) for a judgment of \$62,367.93 against third party garnishee Rosendin
3 Electric, Inc., a California corporation registered to do business in Nevada (“Rosendin”) and in
4 favor of JR Concrete Cutting, Inc., a Nevada corporation and Edith Richelle Herrera, an
5 individual (“JR”) for use by the Trust Funds. This application is supported by the pleadings on
6 file in this case, the points and authorities that follow, and the exhibits hereto.

7
8 Dated: July 16, 2012.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

9 /s/ Adam Segal

10 Adam P. Segal, Esq.

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16 **POINTS AND AUTHORITIES**

17 On January 6, 2010, the Court entered a judgment in favor of the Trust Funds and against
18 JR for \$87,917. Ex. 1 (ECF No. 5). On March 1, 2011, the Court Clerk issued a writ of execution,
19 setting forth \$56,750 as the amount remaining due. Ex. 2 (ECF No. 14), at 2. On May 15, 2012,
20 the Trust Funds provided to the U.S. Marshal various copies of the writ of execution, a writ of
21 garnishment for service, garnishee payment, and various other items and requested that the writ of
22 garnishment be served on Rosendin. Ex. 3.

23
24 Rosendin is a foreign corporation whose resident agent for service of process in Nevada is
25 the Corporation Trust Company of Nevada. Ex. 4. The U.S. Marshal served the writ of
26 garnishment and related documents on Rosendin’s resident agent on May 31, 2012, tendering the
27 required garnishee payment. Ex. 5 (EFC No. 27). The U.S. Marshal and the Deputy Clerk both
28

1 signed the service receipt, certifying that the documents were served and the garnishee fee
2 tendered. *Id.* Rosendin did not respond.

3 Rosendin, as garnishee, failed to respond to the Trust Funds' garnishment, and therefore
4 the Trust Funds are entitled to a judgment for the amount garnished. Nevada Revised Statute
5 31.320(1) states:

6 1. If the garnishee has been duly served with the writ of garnishment and
7 interrogatories, and been paid or tendered the fee of \$5, and the fact of the
8 payment or tender is duly certified by the officer who served the writ over the
9 officer's official signature, or that fact is made to appear by the person serving
10 the writ under oath, but the garnishee fails, neglects or refuses to answer the
11 interrogatories within the time required, the court shall, upon application
12 therefore by the plaintiff with at least 5 days' notice of the hearing upon the
13 application given to each defendant who has appeared in the action, enter
14 judgment in favor of the defendant for the use of the plaintiff against the
15 garnishee for:

16 (a) The value of the property or amount of money specified in the writ of
17 garnishment; or

18 (b) If the garnishment is pursuant to NRS 31.291, the amount of the lien
19 created pursuant to that section.

20 The Trust Funds have a judgment and, on information and belief, the garnishee Rosendin
21 is indebted to JR. The U.S. Marshal duly served the garnishment documents on the garnishee.
22 (ECF No. 27.) The Marshal's due service gives this Court jurisdiction of the garnishee. *See* NRS
23 31.280; Fed. R. Civ. P. 69. Rosendin was required to respond to the garnishment within twenty
24 days or June 20, 2012. NRS 31.260. Rosendin has not responded to the writ as of today's date.

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1 Therefore, Nevada Revised Statute 31.320 requires entry of judgment for the amount
2 garnished, and the Trust Funds request that the Court enter such judgment against Rosendin and
3 in favor of JR for use by the Trust Funds, in the amount of \$56,750.

4
5 Dated: July 16, 2012.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

6 /s/ Adam Segal

7 Adam P. Segal, Esq.

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CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(b), I certify that I am an employee of Brownstein Hyatt Farber Schreck, LLP and that on this 16th day of July, 2012, I served a true copy of the foregoing **MOTION FOR GARNISHEE JUDGMENT AGAINST ROSENDIN ELECTRIC, INC.** upon:

NO PARTIES ENTERED

☒ a. **BY CM/ECF System**

/s/ Ebony Davis

An Employee of Brownstein Hyatt Farber Schreck, LLP